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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 718

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON, MARTHA WASSON and N. H. REED,
Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

PETITION AND BRIEF.

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IN THE

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On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

PETITION.

(The brief in support of this petition begins at page 10.)

To the Honorable Fred M. Vinson, Chief Justice, and the Associate Justices, of the Supreme Court of the United States.

Your petitioners respectfully show:

I.

A SUMMARY STATEMENT OF THE MATTER INVOLVED.

---

1. The Issue.

There is here presented the single clear cut issue whether the judge of a bankruptcy court may exercise power not granted by the constitution and denied to it by statute:

The question is whether, in a proceeding under Sec. 75 of the Bankruptcy Act, 11 USC 203, a bankruptcy court has **power** to disclaim real estate, which is thep roperty of the farmer debtor, or to dismiss the proceeding, without compliance with the prescribed procedure which is provided under that statute.

This issue was the only one presented below in (1) appellants' brief, (2) in oral argument and (3) in their Petition for Rehearing and it was totally ignored by the court below.

2. The Statutory Law.

The statute involved is Section 75 of the Bankruptcy Act; 11 USC 203; known as the Farmer Debtor Law.

3. The Decisions in the Courts Below.

No opinion was rendered in the District Court. That court's final order is at R 211.

The opinion of the Court of Appeals is not reported; it is at R 228. The final order of that court is at R. 230. Its order denying rehearing is at R. 235.

4. The Procedure.

Very briefly the pertinent proceedings were as follows:

The petitioners filed their petition under Sec. 75 (a) to (r); 11 USC 203 (a) to (r), for composition or extension. R. 119. File mark at R 134.

Proceedings for composition or extension were completed and reported to the court. R 2, paragraph 3.

The court granted leave to file an amended petition under Sec. 75 (s) for the three year stay. R. 2, paragraph 4.

Two days later the petitioners filed such amended petition under Sec. 75 (s). R. 2, paragraph 4. R. 138. File mark at R 154.

On the same day the amended petition was filed the respondent Wasson petitioned that the cause be dismissed. Later he petitioned that the farm covered by his mortgage (trust deed) be disclaimed and for leave to foreclose. R 155. R 160.

The court granted the Wasson petitions to disclaim the mortgaged farm with leave to foreclose "outside of the jurisdiction of this court." R. 164, first paragraph at R 167. Wasson foreclosed his mortgage by trustee's sale at which he was the purchaser. R 6, paragraph 8.

The petitioners appealed from the District Court's disclaimer and leave to foreclose but their appeal was dismissed. R 172.

On January 14, 1943 the court entered an order (apparently *sua sponte*) finding, contrary to the fact, "That no amended petition has been filed in this cause." R 177, at paragraph 3.

The amended petition had been filed, as stated above. The Record at R 138, file mark at R 154, shows the amended petition was filed October 25, 1939.

Out of respect to the court the petitioners filed another amended petition under Sec. 75 (s) reciting the filing of their former amended petition under Sec. 75 (s) and expressly stating they did not thereby withdraw it. R 179. File mark at R 181.

Later the District Court denied the petitioners' right to file an amended petition under Sec. 75 (s) and ordered that it having been "presented to the Clerk" it be stricken and that the case "having been heretofore dismissed" no further proceeding be had. R. 182.

On appeal the United States Court of Appeals for the Fifth Circuit affirmed the District Court and this Court denied certiorari. R 12 paragraphs 23, 25 and 26. 139 F. (2d) 183. 322 US 734.

Pursuant to the decision of the Court of Appeals the petitioners on April 15, 1943 filed in the District Court a new petition under Sec. 75 (a) to (r) for composition or extension, which the court approved and referred but no action was taken upon it except to dismiss it. See Report of Special Master. R 185, at 187, paragraph 2.

On January 26, 1946 the petitioners, and later on February 18, 1946 certain creditors, moved in the Bankruptcy Court to reopen and reinstate the original proceedings back to their first amended petition under Sec. 75 (s). R 1. R 17.

The motions were denied upon motion of the present respondents and both pending farmer debtor causes were dismissed. R 211 at 212 last two paragraphs.

On appeal from this final order it was affirmed. R 230 f,

235. A petition for rehearing, R 232 to 234, was denied. R 235.

This petition seeks certiorari to review that affirmance.

II.

Statement of the Basis of the Jurisdiction of this Court.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code; 28 U. S. C. 347 (a).

The petitioner has complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The judgment of the court below (R. 230) was entered on November 14, 1947 and became final on January 5, 1948 when the petition for rehearing was denied. R 235. This petition for certiorari is filed within three months thereafter.

III.

The Questions Presented.

This petition for certiorari presents the following questions:

1.

When the judge of a bankruptcy court performs an act beyond the power delegated in the statute pertaining to the cause in which he acts, may that act have any efficacy?

2.

When the judge of a bankruptcy court performs an act beyond the power delegated by the Constitution, may that act have any efficacy?

3.

When the people by the Constitution delegate to the Congress power to establish uniform laws on the subject of

bankruptcies and the Congress establishes a law within that power definitely prescribing the extent of power given to a court of bankruptcy, may the judge of such court effectively act as if it had prescribed a different power?

4.

When the Congress legislates upon the subject of bankruptcies by granting to farmer debtors the right to have all their property administered pursuant to a petition, does a judge of a court of bankruptcy have power to deny that right?

5.

When the Congress in legislating upon the subject of bankruptcies directs the judge of a court of bankruptcy to administer the property of a farmer debtor, does that judge have power to disclaim such property?

6.

When the Congress by legislation upon the subject of bankruptcies directs and prescribes precisely what procedure a judge of a court of bankruptcy shall follow before any proceeding against land or its owner under mortgage may be instituted or maintained, does such a judge have power to authorize any such proceeding in any other manner?

IV.

Reasons For Allowance Of The Writ of Certiorari Prayed For.

1.

An important question is involved as to the meaning of an Act of Congress.

2.

An important question is involved concerning the course of administration of the farmer debtor law under the Bankruptcy Act.

3.

There is conflict of decisions amongst the federal courts.

4.

The important question of the nature of the power of a judge of a court of bankruptcy is involved.

5.

The important question of the nature of the power of a court of bankruptcy is involved.

6.

There is involved the question whether the judge of a court of bankruptcy may dispute the record of his own court. We specifically refer to R 177, at 178, paragraph (3) where the court *sua sponte* without a hearing found contrary to the docket and file mark, on January 22, 1943 (R 179), "That no amended petition has been filed in this cause;" whereas the Clerk's Docket then showed that such an amended petition had been filed in his court on October 25, 1939. R 138 and 154. Also see the report of the court's conciliation commissioner and special master at R 186 the third sentence of the first full paragraph: "This court entered an order finding evidently by mistake that no amended petition had been filed" . . .

7.

There is involved the question whether the judge of a bankruptcy court may *sua sponte*, without a hearing, dis-

miss a farmer debtor proceeding pending under Sec. 75 of the Bankruptcy Act on the erroneous ground that no amended petition under Sec. 75 (s) had been filed and at the same time grant leave to file such an amended petition by a named date and when such an amended petition is so filed (in which the filing of the previous amended petition is recited and in which it is expressly stated that such amended petition was not thereby withdrawn), deny the right to file it and order it stricken from the files. R 182, paragraph 2.

8.

The question is presented whether a United States Circuit Court of Appeals may lawfully entirely ignore the single question presented by the appellant on appeal by brief, in oral argument and by petition for rehearing.

9.

The question is presented whether a farmer debtor's right to have his mortgaged property administered under Sec. 75 may be defeated by an unlawful sale of said property under a deed of trust while his petition as a farmer debtor is pending in the bankruptcy court.

10.

In its interpretation and administration of the farmer debtor law the Bankruptcy Court departed from its clear provisions, particularly of Section 75 (o) which prohibits the court from authorizing foreclosure during the pendency of a farmer debtor proceeding.

11.

In its interpretation and administration of the farmer debtor law the Bankruptcy Court departed from its clear

provisions particularly of Section 75 (n), (p) and (s) which place exclusive jurisdiction and power in the bankruptcy court.

Wherefore we pray that a Writ of Certiorari issue to the Appellant Court below directing it to certify and send to this court a transcript of the record and the proceedings thereon so that this cause may be determined by this court and for all other proper relief.

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Lima, Ohio,
April 2, 1948.

IN THE

Supreme Court of the United States

October Term 1947

No.

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON, MARTHA WASSON and N. H. REED,
Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF.

In Support of Petition for Writ of Certiorari.

The Subject Index precedes the Petition for Certiorari.

All emphasis is supplied unless otherwise stated.

I.

The Report Of The Decision Below.

The opinion below is not yet reported. It appears at pages 228 to 230 of the record.

II.

Grounds On Which The Jurisdiction Of This Court Is Invoked.

The basis for the jurisdiction of this court has been stated at page 5 of the preceding Petition for Certiorari.

III.

STATEMENT OF THE CASE.

A Very Brief Statement.

The briefest statement of the gravamen of the case is that the judge of the bankruptcy court attempted to dismiss the case and grant leave to foreclose, without observing the conditions of power to act under Sec. 75 (o) (if, as he found, no amended petition under Sec. 75 (s) had been filed) or without any power whatsoever (if, as was the fact, an amended petition under Sec. 75 (s) was on file).

The purported dismissal and leave to foreclose order was beyond the power of the court. It was an absolute nullity and the petitioners' farmer debtor case is to this day pending.

A Fuller Statement.

The respondents Wassons and Reed are respectively the mortgage holders and their successor in interest.

The petitioners filed their farmer debtor petition under Sec. 75 (a) to (r) 11 USC 203 (a) to (r), for composition or extension; no composition or extension was reached whereupon the court granted leave to file an amended petition under Sec. 75 (s) for a three year stay and within

two days such an amended petition was filed. R 119, file mark R 134. R 2, paragraph 3. R 2, paragraph 4. R 138, file mark R 154.

On the same day the amended petition was filed Wasson filed a petition asking that the cause be dismissed and later he asked that the farm subject to his mortgage be disclaimed and for leave to foreclose. These petitions were granted without compliance with Sec. 75 o) forbidding it (if Sec. 75 (o) was then applicable, and if not then apllicable, by no power whatsoever) by disclaiming the farm and granting leave to foreclose "outside of the jurisdiction of this court". Wasson thereupon had the farm sold at trustee's sale at which he was the purchaser. R. 155. R 160. R. 164, at first paragraph at R 167. R. 6, paragraph 8.

The petitioners appealed from the disclaimer and leave to foreclose and their appeal was dismissed. R 172.

Thereafter on January 14, 1943 the court, *sua sponte* by an order found, contrary to fact, that no amended petition had been filed. The petitioners then filed their second amended petition under Sec. 75 (s) reciting the previous filing of their amended petition under Sec. 75 (s) and expressly stating they did not withdraw it. R 177, at R 178, paragraph (3). R 138, file mark at R 154. R 179, file mark at R 181.

Thereupon the court denied the right to file an amended petition under Sec. 75 (s) and ordered it stricken from the files. R 182. On appeal the Fifth Circuit affirmed, and this court denied certiorari. R 12, paragraphs 23, 25, and 26. 139 F(2d) 183. 322 US 734.

The appellate court held that the petitioners might file a new petition under Sec. 75 (a) to (r) for composition or extension and they did so and it was approved and referred.

But the court dismissed it also. R 185, at 187, paragraph 2. R 212, last paragraph.

Later both the petitioners and certain creditors moved in the Bankruptcy Court to reopen and reinstate the orignal proceedings back to the first amended petition under Sec. 75 (s). Both motions were denied upon motion of the present respondents and both pending farmer debtor cases were dismissed. R 1. R 17. R 211 at 212, last two paragraphs.

The petitioners appealed and the order of dismissal was affirmed. A Petition for Rehearing was denied. R 230 f 235. R 235. The accompanying petition is for certiorari to the appellate court.

IV.

Specification Of Errors.

1.

The judge of the bankruptcy court could not give power to any individual, officer or court to foreclose against a farm within its exclusive jurisdiction given to it by Congress in Sec. 75 of the Bankruptcy Act and any attempt to do so was a nullity.

2.

Only Congress can withhold, give and take away power to act under the bankruptcy clause of the Constitution and the judge of the bankruptcy court could not share with, or delegate to another, any part of that power created in the bankruptcy court by Act of Congress in Sec. 75 of the Bankruptcy Act.

3.

The judge of the bankruptcy court could not divest the bankruptcy court of the power reposed it by an Act of Congress in Sec. 75 of the Bankruptcy Act, and neither the mortgage holder nor the trustee in the deed of trust (mortgage) could receive any power from the judge of the bankruptcy court to foreclose against, or deprive the mortgagor of, mortgaged real estate over which the bankruptcy court had exclusive jurisdiction by Act of Congress in Sec. 75.

4.

The judge of the bankruptcy court erred, and his acts were nullities, in attempting to disclaim the farm placed within the exclusive jurisdiction of the bankruptcy court by the Act of Congress in Sec. 75 of the bankruptcy act.

5.

The attempt of the judge of the bankruptcy court to deprive the farmer debtors of their right, created by the Act of Congress in Sec. 75 of the Bankruptcy Act, to have their farm and the mortgage against it administered solely in the bankruptcy court was a nullity.

6.

The attempt of the judge of the bankruptcy court to disclaim the farmer debtors' farm which was placed within the exclusive power of the bankruptcy court by their petition and the Act of Congress in Sec. 75 of the bankruptcy act was a nullity.

7.

The judge of a bankruptcy court could not destroy the efficacy of a petition filed by a farmer debtor pursuant to the Act of Congress in Sec. 75 of the Bankruptcy Act by

finding, contrary to the fact and contrary to the docket record and file mark of his own court, that it was never filed.

8.

The judge of a bankruptcy court could not order stricken from the files an amended petition under Sec. 75 (s) of the Act of Congress in Sec. 75 of the Bankruptcy Act filed pursuant to his express order.

9.

The judge of the court of bankruptcy had no power to modify the definite course of procedure laid down by Congress in Sec. 75 of the Bankruptcy Act.

10.

The court of appeals below erred in declining to consider the single question, namely that of power delegated to the bankruptcy court by Act of Congress in Sec. 75 of the Bankruptcy Act, argued by brief and orally and presented by petition for rehearing.

V.

Summary Of The Argument.

Courts of Bankruptcy derive no power whatsoever from the Constitution.

The government of the United States, legislative, executive and judicial, has no Power except that derived from the Constitution.

The Constitution delegates to Congress power to establish uniform laws on the subject of bankruptcies.

Congress has erected courts of bankruptcies.

Congress in Sec. 75 of the Bankruptcy Act has given certain powers to a court of bankruptcy with definite restrictions on such powers.

A judge of a court of bankruptcy may not usurp the constitutional power of Congress by withholding, giving, modifying or taking away the power of a court of bankruptcy. Any act of a judge of a court of bankruptcy attempting to change, add to or take from the power placed in a court of bankruptcy by Congress is void.

Such an act is a nullity and no right can be based upon it. It is, as this court has sometimes said, *coram non judice*, that is, the act of one not acting in a judicial capacity.

To restate it unmistakably such an act by a judge has no more efficacy than if done by the janitor of the court house.

To state it yet another way such an act is as void as a so-called decree of divorce which might be pronounced by a judge of a court of bankruptcy. No legal consequence could follow from such a pronouncement—it would be *coram non judice*.

We say that the several acts of the judge of the bankruptcy court below which were not consistent with the power delegated to courts of bankruptcy were, from their inception, nullities, utterly void—not merely unlawful or erroneous and voidable upon appeal, such as might become the "law of the case" if not appealed, but they were totally ineffective.

We say that any other view is that of a government by men and not of laws and a usurpation of legislative power by the judge who by the Constitution took an oath to support the Constitution and laws enacted pursuant it.

VI.

ARGUMENT.

Preliminary Statement.

Here we consider that we must clear away some rubbish that obstructs our place of work. We refer to the document printed in the Record at R 222 to 227 entitled "Motion of Appellees for an Injunction Against Appellants for Filing any Suit in the Future." It was filed in the appellate court, not in the bankruptcy court.

This document, because of its content, in both form and substance, its time and manner of filing, and the nature of the power of the court to which it was addressed and of this court, we deem to be scurrilous. It could be productive of no effect except to obscure the issue and dull the presentation of the appellants' case before the court.

It was filed at virtually the latest possible moment before argument. This case was noticed for argument nearly five weeks before the date set, November 3, 1947. That date, November 3, 1947 was a MONDAY. This document was filed SATURDAY November 1, 1947. R 222, top of page. It was verified on October 22, 1947 more than two weeks before it was filed, as shown at R 227. The original certified transcript shows that as originally typed the jurat was dated October 8, 1947 more than four weeks before it was filed. The date was changed to October 22 with pen and ink. (The petitioners were unsuccessful in their attempts to have the printed record show this change.)

Note: After this brief was printed we received copies of the Additional Record made in the Appellate Court and printed in Washington in which correction slips had been pasted at R 227, f 228, being photostatic copies of the original jurat showing "8th day of October 1947" with the "8th" marked out and "22" overwritten with pen and ink.

The appellants, here the petitioners, and their counsel first learned of this document just before argument on Monday morning, November 3, 1947. It was not mentioned in open court.

We pass on to resume the Argument.

Some Authorities.

"The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people." Tenth Amendment.

"The Congress shall have power . . . to establish . . . uniform laws on bankruptcies" . . . Article I, Section 8.

"The filing of a petition . . . shall immediately subject the farmer and all his property . . . for all purposes of this section to the exclusive jurisdiction of the court," Sec. 75 (n).

"Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted . . . in any court or otherwise, against the farmer or his property . . . . . "Proceedings for foreclosure" . . . [or] "sale . . . under any . . . mortgage." Sec. 75 (o).

"The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act." Section 75 (p)

"A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition un-

der this section and farmers shall not be required to be represented by an attorney in any proceeding under this section." Section 75 (q)

"Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer debtor." Kalb v. Feuerstein, 308 U. S. 433, page 444.

"This discretionary power of the court is exhausted when the court terminates the proceedings or accelerates their termination. Such termination can be effected only pursuant to the precise procedure which Congress has provided." Wright v. Union Central, 311 U. S. 273, at page 281.

The following well known quotations are from the unanimous decisions of this court in *John Hancock* v. *Bartels,* 308 US 180; *Borchard* v. *California Bank,* 310 US 311; and *Wright* v. *Union Central,* 311 US 273. They are expressions of this court concerning the nature of the power vested in courts of bankruptcy by Congress in Sec. 75 of the Bankruptcy Act.

This court has referred to, and enforced, the "mandate of the statute"; the "scheme of the statute"; the "orderly procedure"; the "procedure prescribed by Section 75 (s)"; the "compliance with the procedure required by the statute"; the "orderly administration"; and so forth. And this court has said that when not observed by courts of bankruptcy the result "would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate."

We do not know how it could be more forcefully stated, than in the statutes and in the decisions of this court, that the judge of a court of bankruptcy may not create, modify or ignore power reposed in that court by Act of Congress.

What the Judge Did Not Do.

How Creditor Wasson Misled the court.

From start to finish this *Garlington* case was unlawfully administered by the judge of the bankruptcy court. This misuse by the judge of the power of the bankruptcy court stemmed from creditor Wasson's repeated importunities.

We list some of the errors here, for convenience following the order of the pages of the Record, and confining the list particularly to the Wasson angle of the case. There are many others in the Record.

1.

R. 35 to 48; Respondents' Answer to Motion to Reopen:

Twenty-seven times the farmer debtors Garlington are referred to as "bankrupts" or the proceedings as "bankruptcy." They are farmer debtors, not bankrupts. The proceedings were debtor proceedings, not bankruptcy. They were denied their right to file their amended petition and to be adjudicated farmer debtor bankrupts.

Within this scope of misconception of the difference between debtor proceedings and bankruptcy proceedings arose all of the errors of the court. The bankruptcy theory and procedure in regular bankruptcy under the Act of 1898 are altogether different from the debtor laws initiated on March 3, 1933 for individuals, farmers, railroads, corporations and municipalities. Some of the fundamental differences are:

Regular Bankruptcy	Farmer Debtor Proceedings
In regular bankruptcy there is always adjudication as a bankrupt.	In debtor proceedings there is never an adjudication, it is prohibited, under the petition and permitted only when prayed for in an amended petition under Sec. 75(s).
In regular bankruptcy title goes to the court and must be conveyed by the court.	In farmer debtor proceedings title stays in the debtor, and even when by amended petition under Sec. 75 (s) an adjudication as a farmer debtor is made, title remains in the farmer debtor bankrupt and his possession is a mandate of the statute. A receiver in possession, must be removed and possession restored to the farmer debtor.
In regular bankruptcy jurisdiction of a court in foreclosure attaching prior to the filing of a petition is ordinarily retained and respected by the federal court.	In farmer debtor proceedings jurisdiction is exclusively in the federal court. Without notice the mere filing of a farmer debtor petition, even with a conciliation commissioner, deprives all other courts of all Power.
Ordinarily in regular bankruptcy the federal court may surrender its jurisdiction and disclaim real estate security as "burdensome."	In a farmer debtor proceeding the court may not divest itself of jurisdiction. Only by following "precise procedure" prescribed by statute may it authorize a proceeding in another court to be resumed.

2.

R 155 to 159 First Wasson petition (to dismiss the proceeding).

There was not a single valid ground alleged in the first application. To grant the petition on any one of them was not within the power of the court.

R 157. The allegation that the debtor had occupied the land for two years and not paid "as much as one dollar."

R 157. That the debtor's proposal was "not in good faith" and was "in bad faith."

R 159. That "no equity" existed.

R 159. Praying for dismissal of the proceeding and that relief under Sec. 75 (s) be denied.

3.

R 160 to 163. Second Wasson Petition (for leave to foreclose).

There was in this second application not one valid ground for granting leave to foreclose. Granting it an any one was not within the power of the court.

R 162. That "no equity" existed.

R 162. That the farmer debtor had not been a good farmer.

R 163. That the creditor would lose unless he could foreclose.

R 163. Praying for leave to foreclose.

4.

R 164 to 168. Order disclaiming the farm.

Every ground claimed as a basis for disclaimer was beyond the power of the court to act upon.

R 166. Finding that the debtor had possession and was in default.

R 166. Finding that the land had deteriorated in value.

R 166. Finding that "no equity" existed.

R 166. Finding that the real estate was "burdensome."

R 166. Finding that it would be for the best interest of the estate to disclaim the real estate.

5.

R 177 to 179. Order of the Court Entered January 22, 1943.

R 178. Finding that no amended petition under Sec. 75 (s) had been filed. (It had been filed October 25, 1938. R 138 and 154.)

R 178. Granting leave to file an amended petition under Sec. 75 (s) by February 1, 1943. (It had already been filed on October 25, 1939. R 138 and 154.)

R 178. Dismissing the case subject to the filing of an amended petition under Sec. 75 (s) (already filed on October 25, 1939. R 138 and 154).

6.

R 182. Order of the Court Entered March 5, 1943.

R 182. Order denying the right to file an amended petition "and that such petition having been presented to the Clerk, be stricken, and that this case, having heretofore been dismissed no further proceedings be had herein."

R 182. Finding that the debtor had not prosecuted his case as required by law and by General Order 50, Subdivision 4.

R 182. Finding that more than three years elapsed from the filing of the original petition and an amended petition.

Divergent Views of the Case by the Judge.

Part of the time the judge declared the case to be under Sec. 75 (a) to (r) for composition or extension and part of the time he declared it to be under Sec. 75 (s) for a three year stay.

R 137. Order entered October 25, 1939. The judge found that the statutory steps under Sec. 75 (a) to (r) for composition or extension had been taken and ordered dismissal "without prejudice to the right of the debtors to amend their petition and proceed."

R 138, file mark at 154 Amended Petition under Sec. 75 (s) filed October 25, 1939. Their amended petition under Sec. 75 (s) was filed the same day October 25, 1939.

R 177, file mark 178, order entered January 22, 1943. The judge *sua sponte* found that "no amended petition has been filed in this cause." Leave granted to file an amended petition under Sec. 75 (s) "*before* the first day of February, 1943" (paragraph 6); "if he filed his petition *by* the first day of February, 1943" (next to last paragraph of the order at bottom of R 178).

R 179, file mark at R 181. Amended petition under Sec. 75 (s) filed February 1, 1943. The amended petition under Sec. 75 (s) was filed on February 1, 1943 in accordance with the order at R 177. In it the petitioners recited the filing of their amended petition under Sec. 75 (s) on October 25, 1939 and expressly stated they did not withdraw it.

R 182, Order entered March 5, 1943. The Judge ordered that "the Debtor, J. S. Garlington, be denied the right to file his Amended Petition in Bankruptcy, and that such Petition, having been presented to the Clerk, be stricken, and that this case having heretofore been dismissed, no further proceedings be had herein." No doubt referring to the dismissal, with right to file an amended petition under Sec. 75 (s) at R 137—or was it to the dismissal at R 177, last paragraph at R 178) with right to file an amended petition under Sec. 75 (s)?

Under these circumstances of indefiniteness and uncertainty we must equally consider both (1) that the case was under Sec. 75 (a) to (r), and (2) under Sec. 75 (s); or that it was under either the one or the other.

It really makes no difference whether the cause was pending under Sec. 75 (a) to (r) or under Sec. 75 (s). In either event the court had it within its exclusive jurisdiction and had no power to dismiss it, and if it was under Sec. 75 (a) to (r), no power to permit foreclosure except in strict accordance with the statute.

There is one point that possibly should be mentioned. It has been claimed by a few wishful thinking creditors that there is an Achilles' heel right at the change over between Sec. 75 (a) to (r) and Sec. 75 (s) where it is claimed, the bankruptcy court loses its exclusive jurisdiction. That situation does not enter here because the amended petition under Sec. 75 (s) was filed.

The Sixth Circuit overruled that contention in view of Sec. 75 (n) which says that: "The filing of a petition . . . shall immediately subject the farmer and all his property . . . **for all purposes of this section** to the exclusive jurisdiction of the court," and Sec. 75 (p) which reads: "All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and **subject to the payment of the debtor farmer's creditors, as provided for in Section 75 of this Act.**"

It was argued before the Sixth Circuit in *Schreiver* v. *Oxford,* CCA 6, 116 F (2d) 683, that when a case goes into Section 75 (s) the restriction of Section 75 (o) no longer applies and therefore the state court could, by consent of the federal court, resume jurisdiction of a case pending

when the federal jurisdiction attached. The lower district agreed with that argument and granted permission to the state court continue its unfinished proceedings.

The Sixth Circuit Court conceded that two of its former decisions, (*Hoyd* v. *Citizens Bank,* CCA 6, 89 F (2d) 105 and *Trego* v. *Wright,* CCA 6, 111 F (2d) 990), might be so construed. However in view of *John Hancock* v. *Bartels,* 308 US 180, it held that: "we conclude that when, as here, the farmer-debtor has filed his petition under section 75, sub. (s), the provision in section 75, sub. (o), for vacating stay of foreclosure proceedings upon petition therefor must be limited so as not to apply until all steps provided by section 75, sub. (s), have been taken, and that the court erred in granting appellee's petition for leave to proceed with foreclosure."

We desire to examine the precise nature of the power of the bankruptcy court and of a judge of that court.

POWER

As Distinguished from Jurisdiction.

In this *Garlington* case we are concerned with a great legal subject, one which underlies all jurisprudence. Fundamentally the discussion requires a clear distinction between "jurisdiction" and "power." The term "jurisdiction" is sometimes used in its true sense and sometimes used when "**power**" is meant. Sometimes the word "authority" is used as a synonym for "**power**". In common legal parlance it is usually conceived that if a court have jurisdiction of the person and of the subject matter, it may proceed fully in all subjects touching the person and subject matter. That concept is correct so long as it is con-

fined with the limits of the **power** of the court to act upon the person and the subject matter. But when we pass beyond the limit of the **power** of a court, jurisdiction of person and of subject matter becomes meaningless, because the court is impotent. It can then no longer be said that "Every court has inherent right to commit error." Or that "Unless review is sought, an erroneous decision is the 'Law of the Case.' "

In federal jurisprudence all power arising out of legislation is embraced in the constitutional provisions of Article I, Section 8 providing that "The Congress shall have Power." Within that scope, that is within its constitutional power, the Congress may legislate. In such legislation the Congress may confer definite **power** upon the courts subject to definite limitation. Beyond the **power** so conferred a court may not act, even though it have jurisdiction over the person and subject matter. If a court step over the limit of **power** conferred upon it, any act beyond that limit is not merely voidable, but void, and it is of no effect whatever. It may be attacked anywhere, at any time, in the same court, or in any other court, state or federal. The only limitation upon this broad statement is that if property is involved, adverse possession of it under the void order for the prescriptive period may in effect confirm title in the adverse holder. That is, the one in possession is a trespasser.

It all sums up to this: If the Congress oversteps the **power** delegated to it, its act is void—that is unconstitutional. Query: If the judge exceeds the power constitutionally delegated by Congress to a court of bankruptcy, does then his act become valid? If so, the judge has greater power than the Congress and the Constitution!

Neither lapse of time, nor acquiescence, nor any other thing, can directly or indirectly give effect to or lend assistance to an act done by the judiciary when it is without **power.** It is as if such act had never been done, and this is true because the court has no **power** to act.

Thompson v. *Tolmie,* (1829), 27 U. S. (2 Pet.) 157, 163: "If there is a total want of jurisdiction," [that is **power**] "the proceedings are void and a mere nullity, and confer no right, and afford no justification, and may be rejected when collaterally drawn in question."

Voorhees v. *Jackson,* (1836), 35 U. S. (10 Pet.) 449, 474. This Court said of itself: "If not warranted by the constitution or law of the land, our most solemn proceedings can confer no right which is denied to any judicial act under color of law, which can properly be deemed to have been done *coram non judice;* that is by persons assuming the judicial function in the given case without lawful authority."

In the *Voorhees-Jackson* case in 1836 this Court had **power,** but twenty-five years earlier in 1821, and nine years later in 1845, two cases involved courts which had **no power,** although they did have full jurisdiction of person and subject matter.

The one of these cases was:

Thatcher v. *Powell,* (1821), 19 U. S. (6 Wheat.) 119.

Long after the sale of real estate for nonpayment of taxes (no review having been sought) ejectment was brought against the occupant. The state law which was involved authorized sale of the real estate for taxes providing there was (1) a levy on chattels and (2) if not

thereby satisfied, then notice by publication. The record did not show any levy.

The court said:

> Page 125: "That no individual or public officer can sell, and convey a good title to, the land of another unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents, without hesitation; and that the person invested with such a power, must pursue with precision the course prescribed by law, or his act is invalid, is a principle which has been repeatedly recognized in this court."

To the argument that there was mere error but the proceeding was not void and the title could not now be attacked, because it was cured since no review had ever been sought, the court said:

> Page 127: "We think otherwise. In summary proceedings, where a court exercises an extraordinary power under a special statute prescribing its course, we think that course ought to be exactly observed, and those facts especially which give jurisdiction, ought to appear, in order to show that its proceedings are *coram judice*. Without this act of assembly, the order for sale would have been totally void. This act gives power only on a report to be made by the sheriff. This report gives the court jurisdiction, and without it the court is as powerless as if the act had never passed."

The other case in which a court had **no power** was:

Gantly v. *Ewing*, (1845), 44 U. S. (3 How.) 707.

The law of Indiana provided that before real estate could be sold upon execution the rents and profits must first be offered. A parcel of real estate was sold by the sheriff without first offering the rents and profits. The court held the sale to be utterly void. In answer to the argument

of the unlucky purchaser that he had no notice of the failure to first offer the rents and profits the court said:

> "This is a question of **power** and the answer to the suggestion rests on this: The sheriff's duties are plainly prescribed; if he has no **power** to sell, want of knowledge on the part of the purchaser could not confer it, and no such contingency can be let in to help his deed."

The sheriff was, of course, the agent of the court.

Five years later in 1850 this Court was more explicit on the subject of transgression beyond the limitation of judicial **power.** The occasion was:

> *Williamson* v. *Berry,* (1850), 49 U. S. (8 How.) 495.

This Court said:

> Page 541: "But if it" [a court] "act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers. This distinction runs through all the cases on the subject."
>
> Page 543: "The operation of every judgment depends upon the jurisdiction of the court to render it. **Though there may be jurisdiction for certain purposes in a cause, that jurisdiction may be exceeded in the judgment. And whenever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defense in another court, the jurisdiction of the former may be inquired into.** The rule is that where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing, and does not create a necessity for an appeal."

Here the court used the word "jurisdiction" in the sense of "**power.**"

It is all summed up in 15 Ruling Case Law, "Judgments," page 843:

> "**If a judgment is void, no subsequent proceedings can cure the evil.** Void judgments cannot be validated by citing the parties against whom they are rendered to show cause why they should not be declared valid, nor can such a judgment be ratified by the legislature, for **a void proceeding is so entirely vitiated as to be incapable of amendment or cure.** However, it should be added that **a judgment may be good in part, and bad in part, good to the extent it is authorized by law, and bad for the residue.**"

Precise Source of POWER of a Court of Bankruptcy.

A court of bankruptcy derives no power directly from the constitution.

The Supreme Court is the only court that takes power directly from the constitution and as the court said in *Wisconsin* v. *Duluth*, 2 Dill. 405, 509:

> "It is a proposition which admits of no further debate, and needs the citation of no authorities at this day, that all courts of the United States, except the supreme court, being the mere creatures of congressional statute, can exercise no jurisdiction but such as is given by those statutes; and even the supreme court is limited in all except the original jurisdiction given it by the constitution—a very small portion, indeed, of the power which it exercises by the will of Congress as expressed in its legislation."

This court said in *United States* v. *Union Pacific*, 98 U. S. 569 at the bottom of page 150 of 25 Law Ed., "We say therefore that with the exception of the Supreme Court, the authority of Congress in creating courts and conferring

on them all, or much, or little of the judicial power vested in the United States, is unlimited by the constitution."

So far as **power** is concerned giving, withholding or taking it back effects the recipient precisely the same whether it be a court or a bureau. Where the Land Office of the Department of Interior decides who is entitled to a land patent and delivers it and there is no appeal, title has passed out of the United States. But, said this court: "We are speaking now of a case in which the officers of the department have acted **within the scope of their authority.**" *Moore* v. *Robbins,* 96 U. S. (6 Otto) 530, at page 850 of 24 Law Edition.

No refuge can be taken in the assertion that by the General Bankruptcy Act a court having jurisdiction of real estate may disclaim it, or authorize foreclosure in another court. It was rejected by this court in *Isaacs* v. *Hobbs,* 282 U. S. 734. At page 739 this court speaking of general bankruptcy said:

> "The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. Indeed a court of bankruptcy itself is powerless to surrender its control of the administration of the estate."

So we say that if the judge acts beyond the **power** of a court of bankruptcy, it is *coram non judice*—before one not a court.

"Res Judicata"

"Stare Decisis"

"Law of the Case"

There is no room for justifying the silence of the Court of Appeals below on the only question presented to it by brief and oral argument and in the Petition for Rehearing—the question of the Power of a court of bankruptcy.

At 2 Ruling Case Law "Appeal and Error", Sec. 188, page 226, in discussing the limitations of the rule of the "Law of the Case" the author a generation ago in 1914 said:

> "The better rule, and that more in accord with justice, however, so that though ordinarily a question considered and determined on the first appeal is deemed to be settled and not open to reexamination on a second appeal, it is not an inflexable rule, and if the prior decision is palpably erroneous, it is competent for the court to correct it on the second appeal. This may be said to be the view which has for its support the trend of modern authority," . . .

It is to be noted that this statement is made within the scope of the subject which is within the unquestioned **power** of a court. Where the act of the judge of a court is beyond the **power** of the court there is no "Law of the Case."

34 Corpus Juris "Judgments" 1157, page 746: The Corpus Juris text says that judgment between parties is a conclusive adjudication "where the former adjudication is not void."

In 34 Corpus Juris "Judgments" Sec. 815, page 514, the text says that ". . . a judgment which is absolutely void is entitled to no authority or respect; . . ."

The argument of the secured creditor is that even though the court made a mistake, it is now water over the dam—*res judicata.* And like the money changer at the window "we never make a mistake" and "no corrections made after you leave the window" (unless it be in our favor!).

This theory the layman can not understand. When he makes a mistake, he pays for it—there is no *res judicata* in life outside of jurisprudence. When a court frankly insists that when it, or its subordinate, has made a mistake, it must be corrected, the index of public confidence in and respect for our judicial system and the judiciary curves sharply upward.

When the Eighth Circuit was confronted with such an issue, it met it head on, insisting on justice—not *res judicata.* The integrity and forthrightness of the court is all the more emphatic since the error of the lower court grew out of its zeal in following the ruling of the appellate court itself which, though in accord with the weight of authority when made, was later overruled by this court.

The case was *Peterson* v. *John Hancock,* C.C.A. 8 (1940), 116 F. (2d) 148. The court had this situation before it:

Upon petition of the mortgage holder the bankruptcy court disclaimed the real estate as "burdensome" and authorized foreclosure. The order was based upon our old friends: findings of "no equity," "no hope of rehabilitation" and "lack of good faith." This application and order in the Eighth Circuit was similar to those in this *Garlington* case at about the same time. The denouement however was quite different.

Much later, after time for review had passed, the farmer debtor unsuccessfully sought a revocation of the disclaimer and foreclosure order. As a last effort the farmer debtor

again sought a revocation of the order, calling attention to the decision in *John Hancock* v. *Bartels,* 308 U. S. 180, but the lower court denied relief.

Upon appeal the Eighth Circuit held that the lower court's denials of relief had been in accord with the Eighth Circuit's holdings, but that those rulings were disapproved by the Supreme Court and should be corrected, despite the protective theories of the "law of the case."

The opinion of the Appellate Court by Judge Thomas said:

> "The decision of the Supreme Court in the *Bartels* case clearly demonstrated that the orders of the referee were erroneous. In approving those orders in its order of December 2, 1939, the District Court apparently relied upon the decisions of this court in *Cowherd* v. *Phoenix Joint Stock Land Bank,* 99 F. (2d) 225, and *Bender* v. *Federal Farm Mortgage Corporation,* 99 F. (2d) 252, holding that whenever it appears that no reasonable hope for the financial rehabilitation of the debtors exists and that the liquidation of his property is inevitable, the court should dismiss his petition."
>
> ". . . The court declared that the purpose of section 75 was to afford relief to such debtors who found themselves in economic distress, however severe; and it pointed out that the procedure under the statute is intended to protect all interests. This decision of the Supreme Court in effect reversed the decisions of this court in the *Cowherd* and *Bender* cases, *supra,* and placed a contrary construction on the Act."
>
> ". . . .In the *Bartels* case the Supreme Court held that the provisions of the Act define the procedure to be followed. In the instant case the referee refused to follow that procedure, rejected the mortgaged land as burdensome, and gave the appellee leave to proceed with its foreclosure proceedings. The District

Court approved the orders of the referee and refused to stay foreclosure of the appellee's mortgage. Subsequent to the decision in the *Bartels* case, the court entered an order declining to reconsider its order of December 2, 1939. Thus by the orders complained of the debtor has been deprived of the rights granted by the statute. Such rights can only be had by a reversal of these orders."

"It is argued by counsel for appellee that the order overruling the motion for a rehearing entered on January 15, 1940, is not appealable because it is a discretionary order. In this view counsel are mistaken. The motion for rehearing called for judicial decision, not for judicial discretion. Discretion which must be a legal discretion, does not extend to a refusal to apply well-settled principles of law to a conceded or indisputable state of facts. **In deciding the motion for a rehearing the District Court had jurisdiction to correct its previous orders. The Statute, as construed by the Supreme Court in the Bartels case, is explicit and mandatory, and the District Court had no discretion to act contrary to its terms. The orders entered prior to December 4, 1939, were consistent with the law as it had been announced at that time in the Cowherd and Bender cases, supra, but decisions are mere evidences of the law, not the law itself; and an overruling decision is not a change of law but a mere correction of an erroneous interpretation. The change in interpretation brought about by the decision in the Bartels case is binding upon both the District Court and this Court. The District Court having failed to recognize such change of interpretation, it is our duty on appeal in the administration of justice to reverse its erroneous orders?"**

The Third Circuit took the same view in *Stetson* v. *Stindt,* C.C.A. 3 (1922), 270 Fed. 209, when it held that where the law is violated the court has a judicial duty to correct the error despite the rule that a denial of a new trial is discretionary and not appealable.

Even where a judgment was correct under a statute when rendered but a statutory amendment was later enacted, which if existing at the date of the judgment would have made it erroneous, the judgment was reversed. This was the judgment of this court, by Chief Justice Holmes, in *Carpenter* v. *Wabash,* (1940) 309 U. S. 23, based upon an opinion by Chief Justice Marshall a hundred and forty years before in *United States* v. *Schooner,* (1801) 5 U. S. (1 Cranch) 103.

These refreshing decisions that elementary justice must be done brush aside all such specious arguments as "judicial discretion," "res judicata" and "law of the case." We say "specious" in application to this case. For these doctrines have their proper place in the furtherance of an orderly jurisprudence. But order must not override the judicial obligation to correct mistakes of a court made upon erroneous theories pressed by a litigant which mislead the judge of a court into attempting to exercise nonexistent power which only Congress may create in a court.

Application of the Law to the Farmer Debtor Statute.

This all-pervading principle of our American constitutional jurisprudence has governed in the judicial reviews of administration of the farmer debtor law throughout Section 75; 11 U. S. C. 203.

In *Wright* v. *Union Central,* (1938), 304 U. S. 502, two previous final judgments of the Indiana State Courts (7 N. E. 2d 206 and 10 N. E. 2d 726) though not appealed were totally disregarded by this court. No review of either of them was ever sought in the United States Court. Yet they did not become the "law of the case." This is true

because the mere filing of the farmer debtor Wright's petition in the federal court deprived the state courts of all **power** and consequently whatever they did following that filing was void—"a nullity."

The same "**power**" situation was directly before this court in *Kalb* v. *Feuerstein,* (1940), 308 U. S. 433. In a Wisconsin State Court foreclosure of a mortgage on a farmer's land proceeded to sheriff's sale. Then the farmer filed his petition under Section 75 in the federal court. The state court went on with the foreclosure, confirming the sheriff's sale and issuing a writ of assistance under which the farmer was ejected and the purchaser was put in possession.

The farmer did not contest the state court proceeding, nor did he seek any review of it. Instead he attacked the state court procedure collaterally by two new suits in the state court. In one suit he sought cancellation of the sheriff's deed and restoration to possession. In the other he sought damages against the state judge and sheriff and the purchaser. Demurrers were sustained and upon appeal the Supreme Court of Wisconsin affirmed.

An appeal was taken to this court thus raising the clear cut question of **power.** If the confirmation and ejectment proceedings in the state court were within its **power,** they were merely erroneous and voidable, they could not be collaterally attacked. **They were collaterally attacked.** The farmer did not contest the state court's confirmation and ejectment in the foreclosure case in which they occurred, nor did he seek any review. Upon the respondents' theory in this *Garlington* case they were the "law of the case" though erroneous, and were not subject to collateral attack in another proceeding.

In posing the issue the opinion of this court summarized the opposing views, which were as follows (quoting from this court's opinion):

(1) The Wisconsin Court's view was that:

> "Since there had been no judicial stay, it held that the confirmation of sale and writ of assistance were not in violation of the Act. It would seem" [said the Wisconsin State Supreme Court] "from a consideration of Sec. 75 as amended that the filing of the petition automatically operated to extend the period of redemption. It is possible that that state of facts if made to appear would make the order of the trial court erroneous but the order would be within the power of the court to make. No appeal having been taken, no showing having been made in the state court, an order of sale having been confirmed and the purchaser put in possession, the plaintiff is in no position to claim that the order of the circuit court is void."

(2) The farmer debtor's view was that:

> "The Federal Act of itself, from the moment the petition was filed and so long as it remained pending, operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State court so as to stay its **power** to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the Walworth County Court was not merely erroneous but was beyond its **power**, void, and subject to collateral attack."

Further discussing the question which it had to decide, this court, before it tackled its job, said:

> "It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and

render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally. Although the Walworth County Court had general jurisdiction over foreclosures under the law of Wisconsin, a peremptory prohibition by Congress in the exercise of its supreme power over bankruptcy that no State court have jurisdiction over a petitioning farmer debtor or his property, would have rendered the confirmation of sale and its enforcement beyond the County Court's power and nullities subject to collateral attack. The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts—State—and Federal—must observe. The wisdom and desirability of an automatic statutory ouster of jurisdiction of all except bankruptcy courts over farmer debtors and their property were considerations for Congress alone."

As the foundation for its decision this court quoted Sec. 75 (n) as follows:

"The Act expressly provided: '(n) That filing of a petition . . . shall immediately subject the farmer and all his property, wherever located, . . . to the exclusive jurisdiction of the court, including . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . . or where the sale has not or had not been confirmed,' and 'In

all cases where, at the time of filing the petition, the period of redemption has or had not expired, . . . or where the sale has not or had not been confirmed, . . . the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section'; and

'(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings **shall not be instituted**, or if instituted at any time prior to the filing of a petition under this section, **shall not be maintained, in any court or otherwise**, against the farmer or his property **at any time after the filing** of the petition under this section, and **prior to the confirmation or** other disposition of the composition or extension proposal by the court:

'(2) **Proceedings for foreclosure of a mortgage on land**, or for cancellation, rescission, or specific performance of an agreement for sale of land **or for recovery of possession of land;**

. . .

'(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

'(p) **The prohibitions . . . shall apply to all judicial or official proceedings in any court or under the direction of any official**, and **shall apply to all creditors; public or private**, and **to all of the debtor's property**, wherever located. **All such property shall be** under **the sole jurisdiction and control of the Court in Bankruptcy**, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act.' ''

(This emphasis in these quotations is that of this Court.)

Sixteen times in all in its Kalb decision this Court held with emphasis that the state court proceedings following the filing of the farmer debtor petition were complete nullities.

For example:

Page 443: "In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense. This was accomplished by granting the bankruptcy court exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts."

"The mortgagees who sought to enforce the mortgage after the petition was duly filed in the bankruptcy court, the Walworth County Court that attempted to grant the mortgagees relief, and the sheriff who enforced the court's judgment, were all acting in violation of the controlling Act of Congress. Because that State court had been deprived of all jurisdiction or power to proceed with the foreclosure, the confirmation of the sale, the execution of the sheriff's deed, the writ of assistance, and the ejection of appellants from their property—to the extent based upon the court's actions—were all without authority of law."

The final conclusion was:

Page 444: "Congress manifested its intention that the issue of jurisdiction in the foreclosing court need not be contested or even raised by the distressed farmer-debtor. The protection of the farmers was left to the farmers themselves or to the Commissioners who might be laymen, and considerations as to whether the issue of jurisdiction was actually contested in the County Court, or whether it could have been contested, are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act."

That is, to paraphrase: Considerations as to whether Mr. Garlington did contest in the federal or state court, or whether he could have contested the Order of the Court at R 164 are not applicable where the plenary power of Congress has been exercised in Sec. 75 (n).

Application of the Law to the Wasson Petitions for Disclaimer and Foreclosure.

We deem it worthwhile, and hope the court will bear with us, to stop here and analyze the statute and the applications of creditor Wasson and the Order of the Court disclaiming the land and authorizing foreclosure in the light of this Court's decisions. Those decisions merely emphasize the plain language of the statute.

The Statute

First. The statute takes away from state courts and creditors all POWER from the moment a farmer debtor petition is filed and reposes exclusive jurisdiction and power in the bankruptcy court **"for all purposes of this section."** Sec. 75 (n) and (p). The quotation is from the first sentence of Section 75 (n). See page 18 of this brief.

Second. While a farmer debtor proceeding is under Sec. 75 (a) to (r) for composition or extension the statute gives to the federal court a key, so to speak, which is Sec. 75 (o) for the purpose of unlocking Sec. 75 (n) and (p) so as to open up its power and hand over some of it to the state court and to a creditor. This key may be used only "prior to the confirmation or other disposition of the composition or extension proposal by the court." The quotation is from sec. 75 (o). **After that no key is provided.** Now every key has a bit which is designed to operate upon the bolt and tumblers of the lock it fits. The design of the bit is its most important feature. It is cut with precision into

"wards" and "notches" and every ward and notch of the bit must be used to operate the lock. If it has four wards and notches, all four must be used intact, not three or two or one, to open the lock. If a ward is broken off or a notch is deepened in the bit of the key to the lock of my house, it will not work.

There are four wards and notches in the bit of the key, Sec. 75 (o), which will unlock Sec. 75 (n) and (p). They are:

1. A petition to the judge.
2. A hearing before the conciliation commissioner.
3. A report by the conciliation commissioner.
4. An order to the judge granting the petition.

Creditor Wasson filed a petition, R 160, and the court issued an order, R 164. There was **no hearing by the concilialtion commissioner and no report by the conciliation commissioner.** That is an attempt was made to operate the lock by using only parts one and four of the bit of the key. No matter what was said in the order, the lock was not opened because the statutory key was not used. The order was a nullity and all acts based upon it were nullities.

This is true whether or not a key was available. We mean that if the case was pending under Sec. 75 (a) to (r), the foregoing analysis is applicable. If it was under Sec. 75 (s) no key at all is provided. That is the court may not dismiss, or what is the same thing, authorize foreclosure. That is, we mean to say that such acts were nullities whether the proceedings were under Sec. 75 (a) to (r) or under Sec. 75 (s).

It is not a mere formality that the judge ignored. The statute in Sec. 75 (o) regards the intrusions upon the ex-

clusive jurisdiction of the bankruptcy court which the judge is authorized to allow to be granted as exceptions to be permitted only in very exceptional instances for urgent reasons. Therefore the judge is not empowered to divest the exclusive jurisdiction of the bankruptcy court in the particulars named except there be first a hearing before the conciliation commissioner and a report by the conciliation commissioner to the judge. The judge alone is not permitted upon his own *ipse dixit* to divest the bankruptcy court of its **power** reposed in it by the only source of **power** the congress by legislation under the Constitutional grant.

As we shall see later at page 48 of this brief, in a discussion of *Wright* v. *Union Central*, 311 U. S. 273, this Court declared that the court must follow the "precise procedure" prescribed by Congress in the statute. And this admonition was applied to Sec. 75 (s) (3) where the procedure is not so clearly stated as in Sec. 75 (o).

There was not a single valid ground alleged by Wasson in either of his applications (for he filed two, R 155 and R 160). Those grounds were:

1. Wasson had a second vendor's lien and bought in the first vendor's lien, and Garlington had not paid.
2. The conciliation commissioner allowed time to file an amended petition (Sec. 75 (s)).
3. Garlington's proposal was not made in good faith and he had no hope of rehabilitation.
4. The property was not worth the value scheduled.
5. The land was burdensome to the estate, that is there was no "equity" in it.

In the findings of the court there is not a single one that would support the order at R 164. These findings were:

1. Wasson held a first lien.
2. Wasson held a second lien.

3. (Description of the land).
4. The two liens were purchase money liens.
5. The farmer debtor was in default.
6. The land had deteriorated in value.
7. There was no "equity" in the land.
8. The land was burdensome to the court to administer.
9. It would be beneficial to disclaim the estate.

Adjudications of the Statute.

Now this Court in *John Hancock* v. *Bartels*, (1939), 308 U. S. 180, held that a bankruptcy court could not do what this order, obtained by Wasson, purported to do.

We see the fine hand of Wasson, the operator, in trying to open the lock with a false key at R 155 and R 160. At R 155 he petitioned the court to dismiss the whole proceeding and deny the right to file an amended petition under Sec. 75 (s). A week later, at R 160 he filed, what the court at R 164 calls an "alternative motion" asking merely that the real estate be "abandoned" and that he be permitted to "foreclose" in the state court. That is he not only handed to the court a spurious key but another damaged key with only two of its four wards and notches intact. The court threw aside the spurious key but accepted the damaged one and said: "the door is open, go in and take what you will." That court had no **power** to do—the door was not opened. This theory of circumventing the statute by saying "We will not dismiss his case because we have no **power** to do it. We will disclaim his real estate on which you have a mortgage; do with it what you will," has been repeatedly repudiated by this Court.

The Sixth Circuit recognized it for what it is in *Schreiver* v. *Oxford,* (1941) 116 F (2d) 683, (discussed at page 25 of this brief) where, as here, the creditor asked for disclaimer and leave to foreclose. The decision recognized that disclaimer and leave to foreclose for practical purposes are synonymous with dismissal. Therefore upon the authority of *John Hancock* v. *Bartels,* (1939) 308 U. S. 180, it reversed the District Court which, as here, had recognized such specious argument by "disclaiming" while refraining from "dismissing."

In *Borchard* v. *California,* (1940) 310 U. S. 311, where the creditor and the District court tried to do precisely what the District court did at R 164 in this Garlington case, this Court somewhat impatiently rebuked the effort to hornswoggle the statute. Instead of following the statutory procedure the parties got together and agreed by stipulation that the farmer debtor would pay the net crop proceeds to the mortgage holder. For each of three crop years by separate stipulation and order entered by the court this was done. There was no appeal from these orders—they were procured by the farmer debtor's cooperation and fully executed.

Then the mortgage holder came in with essentially the same allegation as Wasson used: Unpaid debt, no "equity," loss to the creditors, etc. The court, as in this Garlington Case ordered that foreclosure might proceed, and the Appellate Court affirmed the order.

The impatience of this Court with such attempts to plow around the statute are indicated by its words:

> Page 316: "The petition recited the facts as above outlined, stated the principal and interest due under the various notes; set forth the amount of the advances the bank had made for taxes and other accounts and showed an existing indebtedness, secured by deeds

of trust and mortgage, totaling $89,246.82. It alleged that the mortgaged premises would not bring more than $65,000; that the bank had already suffered a serious loss; and that further delay in the sale of the property would entail a greater one."

Page 317: "Instead of prosecuting the cause before the Conciliation Commissioner pursuant to the debtors' petition, the bank resorted to a procedure not contemplated by the statute, evidently on the theory that it could obtain some advantage by that course."

Page 318: "The bank, at any time, could have obtained action by the Conciliation Commissioner and the court, in accordance with the statute. It cannot now maintain that the disorderly and unauthorized procedure followed by the parties is the equivalent of that prescribed by the statute and that, as the petitioners have not been able to rehabilitate themselves, it is entitled to enforce its liens."

In *Wright* v. *Union Central*, (1940) 311 U. S. 273, this Court again thwarted the attempt of a secured creditor to squirm out of the statutory fiat that he shall, like "all creditors, public or private," (Sec. 75 (p)), be subject to law, that is to the "orderly procedure" of that statute. The creditors asked the court (in "the alternative" as did Wasson) either (1) to dismiss the proceeding or (2) to have the real estate sold alleging no hope of rehabilitation, failure to obey orders of court, had made no proposal, no payment and no taxes paid. The District Court found the farmer debtor had disobeyed the court and issued an order of sale. The Seventh Circuit affirmed the District Court saying that the statute "made such action imperative."

This Court reversed the lower courts declaring that a farmer debtor's property may not be sold without first affording him an opportunity to redeem it. The facts and the portion of the statute involved are somewhat

different from this *Garlington* case. But its application is clear. The decision is here quoted to illustrate the attitude of this Court.

> Page 278: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502; *John Hancock Mutual Life Ins. Co.* v. *Bartels*, 308 U. S. 180; *Kalb* v. *Feuerstein*, 308 U. S. 433. Safeguards were provided to protect the rights of secured creditors, throughout the proceedings to the extent of the value of the property. *John Hancock Mutual Life Ins. Co.* v. *Bartels*, 308 U. S. 180, at pp. 186-187; *Borchard* v. *California Bank*, 310 U. S. 311, at p. 317. There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress. *John Hancock Mutual Life Ins. Co.* v. *Bartels*, 308 U. S. 180; *Kalb* v. *Feuerstein*, 308 U. S. 433, lest its benefits be frittered away by narrow formalistic interpretations which disgard the spirit and the letter of the Act."

Under Sec. 75 (s), which the Garlingtons never could get applied; there is a provision at Sec. 75 (s) (3) empowering the bankruptcy court to terminate a farmer debtor proceeding for, as this court's opinion says, "certain contemptuous disobedience of a court's lawful order. In discussing this provision this Court said:

> Page 280: "Congress has provided that certain contumacious conduct on the part of the debtor or his inability to refinance himself within three years

may be an appropriate basis for a termination of the proceedings or for an acceleration thereof. We cannot infer, however, that Congress intended that such facts should have any further legal significance under the Act. To hold that they empowered the court to deprive the debtor of his express and fundamental statutory right to redeem at the reappraised value or at the value fixed by the court, would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression. *Wright* v. *Vinton,* 300 U. S. 440, p. 466. Such an important remedial right cannot be lost by mere implication. And to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate. This discretionary power of the court is exhausted when the court terminates the proceedings or accelerates their termination. Such termination can be effected only pursuant to the **precise procedure** which Congress has provided."

What we invite particular attention to in the quotation just made in the sentence:

"Such termination can be effected only pursuant to the **precise procedure** which Congress has provided." Now the key procedure in Sec. 75 (o) for unlocking and releasing to a state court the exclusive power of the bankruptcy court is indeed a "precise procedure" set out in eighteen simple words:

"**Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner,**"

No interpretation is needed to make clear precisely what must be done to release and devolve a portion of the power of the bankruptcy court when Sec. 75 (o) is invoked. Compared with these eighteen words in Sec. 75 (o) is must be said that the directions being construed by this Court in Sec. 75 (s) (3) were not quite so manifest, or easily construed. They comprise one hundred, eighty-eight words which read:

> **"At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possessions, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal, provided, that upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: Provided, that upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction."**

Note the "Provisos." The farmer debtor may redeem by paying the appraisal **provided** that there may, upon request, be an appraisal. And **provided** further that apon request a creditor may have a public sale. This Court held that the second proviso is overridden by the fundamental right of the farmer debtor to redeem his farm, for the underlying purpose of the act is to save the farmer's

farm if it can be done. This Court says the right to redeem can be cut off only by following the "**precise procedure**" provided by the statute.

In view of this pronouncement can anyone say there is any way of complying with the **precise procedure** of Sec. 75 (o) requiring four plain steps, by omitting two of them? There is no such way; any attempt to do so is futile. The power of the bankruptcy court remains intact, though the judge tells the creditor to go ahead and foreclose. Such act is a "nullity" it is "utterly void" because it is beyond the **power** of the court to do it.

It was as much a nullity as if the court had decreed a divorce to Mr. Garlington from Mr. Garlington. A United States Court has no **power** to decree a divorce.

In *Wright* v. *Logan*, (1942) 315 U. S. 139, the creditor evoked the "reasonable time," "equivalent" theories to evade Sec. 75. For a year the farmer debtor was under Sec. 74. Then she went under Sec. 75 where the case lingered for five years more. The creditor argued she had "had enough." The court agreed and ordered her to redeem or have her farm foreclosed, holding that she had already enjoyed the "equivalent" of all that Sec. 75 could give her. The Seventh Circuit agreed holding: "We conclude that appellants who have heretofore had all benefits to which they could possibly have been entitled under the provisions of section 75 (s) without filing formal aplication for such benefits, are not now entitled to obtain a repetition of those same benefits by filing their petition for adjudication in bankruptcy."

The Ninth Circuit in *Cohan* v. *Elder*, (1941) 118 F (2d)

850 had already declared to the contrary that: "The statute says nothing about a retasonable time. The act is to be construed liberally to accord to the debtor the full measure of the relief afforded by Congress," Citing *Wright* v. *Union Central,* 304 U. S. 502.

It was because of these diverse decisions in the Seventh and Ninth Circuits that certiorari was granted.

This Court reversed the Seventh Circuit, agreement with the Ninth Circuit, saying:

> Page 141: "Section 75 (s) does not by its language condition a farmer's right to adjudication upon the diligence with which he has sought to obtain composition or extension under subsections (a) to (r). It 'applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts.' *John Hancock Ins. Co.* v. *Bartels,* 308 U. S. 180, 184. That was the situation of the farmers here. And 'the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.' *Wright* v. *Union Central Ins. Co.,* 311 U. S. 273, 279. Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes. Cf. *Borchard* v. *California Bank,* 310 U. S. 311. We think the *Bartels; Wright*; and *Borchard* cases control our conclusion here, and that the court below was in error in dismissing the applications for adjudication under 75 (s)."

Re: Mahaffey, Farmer Debtor, (1941) CCA 2, (New York) 129 F. (2d) 292.

The applicability of this *Mahaffey* decision to the present issue arises from these elements of the case: While

Mrs. Mahaffey's farmer debtor proceeding was under Sec. 75 (s) in the New York District Court and after a rental order had been entered the court issued an additional order that she make repairs, pay back taxes and contribute to current taxes. She attempted to take an appeal but failed to perfect it and it was dismissed. So the Garlington's earlier appeal was dismissed. (See page 12, second whole paragraph.)

The Mahaffey order (if the supposed rule in this *Garlington* case be correct) then was *res judicata* and became the "law of the case" although erroneous, and could not be attacked in subsequent proceedings.

The New York District Court then entered a second order permitting foreclosure, on the ground that the previous order had not been obeyed. The second order was appealed, the appeal being a collateral attack on the first order.

We set in parallel columns the applicable statutory provisions and the procedures in the *Mahaffey* case and in the *Garlington* case.

Statutes and Procedures in the Mahaffey and Garlington Cases.

Applicable Statutory Provisions

Mahaffey Case

Sec. 75 (n) "The filing of a petition . . . *shall* immediately subject the farmer and all his property . . . for all the purposes of this section to the exclusive jurisdiction of the court, including all real estate." . . .

Garlington Case

Sec. 75 (n) "The filing of a petition . . . *shall* immediately subject the farmer and all his property . . . for all the purposes of this section to the exclusive jurisdiction of the court, including all real estate." . . .

Sec. 75 (o) "*Except* upon petition made to and granted by the judge after hearing and report by the Con-

Sec. 75 (p) . . . "All such property *shall* be under the sole jurisdiction and control of the court in bankruptcy and subject to the payment of the debtor farmer's creditors is as provided for by section 75 of this act."

Sec. 75 (q) . . . "farmers *shall not* be required to be represented by an attorney in any proceeding under this section."

Sec. 75 (s) (2) . . . "The court *shall* stay all judicial or official proceedings . . . for a period of three years.

ciliation Commissioner, the following proceedings *shall not* be instituted . . . in any court or otherwise, against the farmer or his property at any time after the filing of the petition under this section." . . .

(2) "Proceedings for foreclosure of a mortgage on land, . . . or for recovery of possession of land," . . .

(6) . . . "sale, or other proceedings under . . . any . . . mortgage"

Sec. 75 (p) "The prohibitions of subsection (o) *shall* apply to all judicial or official proceedings in any court or under the direction of any official, and *shall* apply to all creditors, public or private, and to all of the debtor's property, . . . All such property *shall* be under the sole jurisdiction and control of the court in bankruptcy and subject to the payment of the debtor farmer's creditors is as provided for by section 75 of this act."

Sec. 75 (q) . . . "farmers *shall not* be required to be represented by an attorney in any proceeding under this section."

During such three years the debtor *shall* be permitted to retain possession . . . provided he pays a reasonable rental . . . Such rental *shall* be . . . used, first, for payment of taxes and upkeep of the property," . . .

Procedures.

Mahaffey Case
Under Sec. 75 (s) (2)

Court without statutory authority ordered farmer debtor to make repairs, pay back taxes and current taxes.

Farmer debtor attempted to file an apeal but failed to perfect it.

The court by authority of its order proceeded to enter an order permitting foreclosure.

The farmer debtor by appeal from the second order attacked the original order (though her appeal had failed) on the ground that it was beyond the power of the court to make it and therefore void.

The Circuit Court in *Re Mahaffey*, 129 F. (2d) 292, held that there is no power in the bankruptcy court to abdicate its "statutory overseership" and therefore the original order was void and proceedings based on it were also void.

Garlington Case
Under Sec. 75 (s).

Court without statutory authority disclaimed real estate and authorized foreclosure.

Farmer debtor took an appeal but failed to prosecute it.

The creditor by authority of the court order proceeded to foreclose.

The farmer debtor by application for administration attacked the original order of (though his appeal had failed) on the ground that it was beyond the power of the court to make it and therefore void.

The Conciliation Commissioner held (and the District Judge confirmed) that the original order of the court having not been appealed became by *res judicata* the "law of the case," and proceedings based upon it were valid.

The salient points in the Second Circuit's opinion in the *Mahaffey* case are here quoted:

"The issue presented by this appeal is whether a court of bankruptcy may, under section 75 of the Bankruptcy Act," [that is has **power** to] "permit a farmer-bankrupt's farm to be foreclosed in state proceedings because of the bankrupt's failure to make repairs to the premises and payments on current and back taxes, as directed by the bankruptcy court."

"At this point, subsection (s) (2) of the Act comes into play; it provides that the court '*shall* stay' all such non-bankruptcy proceedings for a period of three years, during which period the debtor shall be allowed to remain in possession upon paying a reasonable rental and such payments on his principal obligations as the court shall order pursuant to the Act. No provision is made in the Act for a vacation of the stay, and it seems reasonably clear that, during the three-year period, the bankruptcy court may not abdicate its statutory overseership of the bankrupt's property (*cf. Kalb* v. *Feuerstein*, 308 U. S. 433, 440-443)" . . .

"The order of August 25 must, therefore, be predicated upon the bankrupt's failure to obey the order of July 3, and if the latter order was improper, the order of August 25 must fall with it."

"In construing subsection (s), we start with the premise that so long as the secured creditor's constitutional claim is preserved, he 'certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act.' *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 278 U. S. 279. It is plain that the benefits of the Act would be 'frittered away' if the bankrupt could be swamped with court orders directing him to make payments without regard to his ability to pay. The Act contains no warrant for hanging a judicial

millstone around the bankrupt's neck, and it would be ironic if a relief measure of this type were so construed. Yet that could easily be the precise effect of the order here complained of. First the debtor is required to pay the usual rental for the possession of the property, then she is directed to make payments on her debts, then she is required to defray such current charges as taxes, insurane and repairs, and finally she is directed to amortize the tax arrearages. Such a result is not in accord with purpose of the Act, and it does violence to the letter. The conditions under which the debtor may remain in possession are set out in subsection (s) (2). He must pay a reasonable rental, 'the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity.' This rental must be paid into court, and must be applied on the payment of taxes and upkeep of the property; only the 'remainder' is to be paid to the creditors. In addition the court may require payments on the principal, but they must not be 'inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.' While the court may, of course, make such additional orders as the situation requires (*Borchard* v. *California Bank*, 310 U. S. 317), there is no warrant in the Act for requiring of the bankruptcy any greater payments. The Act clearly contemplates that the rental must be the going rate in the locality, and that payments on principal must not exceed the bankrupt's ability to pay. The effect of thus limiting the rental and the payments on principle would be utterly dissipated if the court could, in addition, require the debtor to pay taxes, upkeep and arrearages. The Act contemplates quite the opposite; rental must be applied to taxes and upkeep. Nor should the possibility of requiring payments on principal be twisted to evade the restriction on increasing the rental.

We hold, therefore, that the court's **power** to direct the making of payments by the bankrupt is limited to rental and proper installments of principal."

The summation of the foregoing salient points is that the order of the court, not authorized by the statiute, was void (not merely voidable) because the **power** to issue it (that is to order additional payments by the farmer debtor) was not delegated by statute.

Applied to this *Garlington* case it says the order of the court disclaiming the Garlington real estate and permitting foreclosure was a nullity and void, not merely voidable, because the court had no POWER to make such an order. It is subject to attack at any time, in any court, and only prescription can give any right to one claiming under it. Such a claimant is a trespasser.

Conclusions and Prayer.

We earnestly submit that there has been just as great, and as much, deprivation of civil rights in the bankruptcy court in the *Garlington* proceedings in their persistent, and thwarted, attempts to have their property administered under the farmer debtor law, Sec. 75 of the Bankruptcy Act, 11 U.S.C. Sec. 203, as in any civil rights case coming before this court.

For the reasons given the petitioners pray for a writ of certiorari to the Fifth Circuit Court of Appeals.

Respectfully submitted,

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